

ENTERED

February 13, 2025

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ASHLEY MALIN and	§	CIVIL ACTION NO
PHILLIP MCNALLEN,	§	4:24-cv-04434
Plaintiffs,	§	
	§	
	§	
vs.	§	JUDGE CHARLES ESKRIDGE
	§	
	§	
TEXAS DEPARTMENT	§	
OF FAMILY AND	§	
PROTECTIVE	§	
SERVICES,	§	
Defendant.	§	

**ORDER ADOPTING
MEMORANDUM AND RECOMMENDATION**

Plaintiffs Ashley Malin and Phillip McNallen, both *pro se* litigants, filed a petition for writ of habeas corpus after the Texas Department of Family and Protective Services filed a petition requesting emergency relief and conservatorship of Plaintiff's child, S.M. Dkt 14 at 2–3. Plaintiffs maintain that the removal of S.M., without prior notice and factual basis, violated their constitutional rights as parents and 42 USC §671(a)(15). Dkt 1 at 3–4. They filed suit in the Southern District of Texas on November 12, 2024, under 28 USC §2254. Id at 1, 3–4. The filed an amended complaint on November 27, 2024, that recast their claims as ones for relief under 42 USC § 1983. Dkt 10.

This matter was referred to Magistrate Judge Yvonne Y. Ho. Pending is her Amended Memorandum and Recommendation dated December 13, 2024. Dkt 14. She recommends that the amended complaint by Plaintiffs for declaratory and injunctive relief under 42 USC §1983 be dismissed without prejudice. Id at 12; see Dkt 10. She also

recommends denying as moot (i) an emergency motion by Plaintiffs for immediate hearing and temporary stay of placement (Dkt 3), and (ii) a motion for subsequent emergency request for immediate relief to maintain child placement and halt unlawful actions pending review (Dkt 11). *Ibid.* Finally, she also denied the motion by Plaintiffs for permission to use the Court's electronic filing system (Dkts 5 & 6) and the request by Plaintiff Phillip McNallen for a hearing (Dkt 12). *Id.* at 13.

The district court reviews *de novo* those conclusions of a magistrate judge to which a party has specifically objected. See FRCP 72(b)(3) & 28 USC §636(b)(1)(C); see also *United States v Wilson*, 864 F2d 1219, 1221 (5th Cir 1989, *per curiam*). The district court may accept any other portions to which there's no objection if satisfied that no clear error appears on the face of the record. See *Guillory v PPG Industries Inc*, 434 F3d 303, 308 (5th Cir 2005), citing *Douglass v United Services Automobile Association*, 79 F3d 1415, 1430 (5th Cir 1996, *en banc*); see also FRCP 72(b) advisory committee note (1983).

Neither party filed objections, although Plaintiffs filed a letter requesting a hearing on their complaint for declaratory and injunctive relief. Dkt 18. No clear error otherwise appears upon review and consideration of the Memorandum and Recommendation, the record, and the applicable law.

The Amended Memorandum and Recommendation of the Magistrate Judge is ADOPTED as the Memorandum and Order of this Court. Dkt 14.


This amended complaint is DISMISSED WITHOUT PREJUDICE. Dkt 10.

The following motions are DENIED AS MOOT: Dkts 3 & 11.

This action is DISMISSED WITHOUT PREJUDICE.

SO ORDERED.

Signed on February 13, 2025, at Houston, Texas.



Hon. Charles Eskridge
United States District Judge